

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1050

In the Matter of)	
)	
PACIFICORP)	RULING
)	
Request to Initiate an Investigation of)	
Multi-Jurisdictional Issues and Approve)	
an Inter-Jurisdictional Cost Allocation)	
Protocol.)	

**DISPOSITION: PROCEDURAL SCHEDULE MODIFIED;
COMMISSIONERS ATTENDING HEARING**

On July 22, 2004, I issued a ruling in this matter, modifying the procedural schedule and granting the Industrial Customers of Northwest Utilities' (ICNU) request for oral argument. On July 23, 2004, PacifiCorp, the Citizens' Utility Board (CUB), and Staff of the Public Utility Commission of Oregon (Staff) filed a stipulation resolving all issues among those parties. On July 26, 2004, ICNU filed a motion for extension of the procedural schedule, stating that it would not have time to prepare its objections to the stipulation. In its motion, it indicated that Staff did not take a position on the motion, but that CUB supported the motion. ICNU was unable to reach counsel for PacifiCorp.

ICNU raises several objections to the July 22, 2004 ruling. First, ICNU indicates that it needs additional time to conduct discovery on the stipulation and supporting testimony. Next, ICNU claims it should have an opportunity to present written testimony in opposition to the stipulation. ICNU also alleges that requiring it to attend an August 5, 2004 hearing on the stipulation would prejudice ICNU's rights to a fair "consideration of its position." Finally, ICNU believes that OAR 860-014-0085(5) provides parties with a minimum of twenty days in which to review and conduct discovery on a stipulation.

Discussion

On May 20, 2004, ICNU and the parties agreed to a procedural schedule, which established hearing dates of July 28 and 29, 2004. On June 16, 2004, the parties participated in a Commission workshop, at which time ICNU discussed its concerns with the revised protocol. I am aware that conversations have occurred between the stipulating parties and ICNU since June 6, 2004, about its signing onto a stipulation, although I am not aware of the content of those

conversations. On July 2, 2004, the hearing date was changed to August 5, 2004, to allow the parties additional time in which to achieve a settlement.

Based upon this history, it is reasonable to assume that ICNU was aware of the general contents of the stipulation, even though it may not have been aware of the specific wording of the final stipulation. ICNU does not claim it was surprised by any of the matters discussed in the stipulation. ICNU has been an active party with knowledge of what other parties have been discussing, and should not need additional time to conduct discovery on the stipulation and supporting testimony.

ICNU claims that it should have time to present written testimony in opposition to the stipulation. The intent of my previous ruling was to provide ICNU with an opportunity to present oral testimony in opposition at the hearing. A party's right is to present testimony, not to determine whether testimony should be oral or written.

ICNU knew in May 2004 that hearings would occur in late July. ICNU agreed to change the hearing date to August 5, 2004. I am somewhat bewildered by a claim that requiring it to appear on a hearing date to which it agreed prejudices ICNU. This claim apparently rests on a misreading of OAR 860-014-0085(5). That rule gives parties 20 days to object or request a hearing, not 20 days to conduct discovery. In this docket, a hearing was already set. No prejudice occurred to any party by maintaining the hearing date.

One additional issue was discussed by ICNU. It assumed that the hearing date would change because ICNU knew that PacifiCorp was filing a stipulation in late July. Based upon its assumption, ICNU did not have its witness, Mr. Falkenburg, make travel arrangements to appear at the hearing. This assumption was in error, and should not be made in the future.

I do not find that ICNU has established good cause in asking for the hearing to be rescheduled. Notwithstanding that statement, I am rescheduling the hearing to avoid any procedural issues on appeal. Further, Commissioners have indicated an interest in attending the hearing, and they are not available on August 5, 2004. The schedule in this docket is now as follows:

ACTIVITY	DUE DATE
Stipulation and Joint Testimony	July 26, 2004
Rebuttal Testimony	August 6, 2004
Cross-examination Statement	August 13, 2004
Hearing	August 19, 2004
Oral Arguments	August 26, 2004
Post Hearing Briefs	September 3, 2004

The schedule requires a bit of explanation. First, some parties filed rebuttal testimony on July 27, 2004, as that was the due date in the previous schedule. Those parties may supplement their rebuttal testimony, as long as that testimony is received by August 6, 2004. Parties who have not filed rebuttal testimony must do so by August 6, 2004. Next, the cross-examination statements should indicate what witnesses the parties wish to cross-examine, the subject matter of the cross-examination, and how long they anticipate the cross-examination to take. I will issue a schedule for the hearing on August 6, 2004. Finally, I am scheduling oral arguments before the filing of post-hearing briefs. This will give the parties an opportunity to respond to arguments raised during the oral arguments. We are trying this procedure to see if it works any better than the standard process of briefs before oral argument.

Dated at Salem, Oregon, this 28th day of July 2004.

Kathryn A. Logan
Administrative Law Judge